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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 146

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

EDNA K. YATES.

SUPPLEMENTAL BRIEF AND ARGUMENT OF JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

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For the convenience of the Court petitioner submits the following supplemental brief and argument making appropriate references to the various portions of the record believed to be important to the determination of the questions involved.

STATEMENT OF THE CASE

THE PLEADINGS

Respondent's original petition was filed in the City Court of Carrollton, Georgia, on November 29, 1932. (R. 4). By amendment to her petition respondent set forth a copy of the policy sued upon to

which was attached as a part thereof a copy of the written application signed by Harmon H. Yates, at Jamaica, New York, on May 2, 1932. (R. 14-20). Petitioner in its original plea and answer, among other things, averred that the insured, Harmon H. Yates, had falsely stated that he had not within the past five years had medical advice for any disease or disorder for which reason it was not liable under its said policy. (R. 12). Petitioner tendered to respondent and paid into Court for her benefit the premium paid upon the policy. (R. 13). By amendment to its original plea and answer petitioner averred that the policy sued upon was a New York contract, and was therefore subject to Section 58 of the New York Insurance Laws (Laws of 1906, c. 326), as follows: (R. 20).

> "POLICY TO CONTAIN THE ENTIRE CONTRACT: STATEMENTS OF INSURED TO BE REPRESENTATIONS AND NOT WARRANTIES.—Every policy of insurance issued or delivered within the state on or after the first day of January, nineteen hundred and seven, by any life insurance corporation doing business within the state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writings unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void."

Petitioner also set out in its amended plea and answer the material portions of the decisions of the Court of Appeals of New York in

Minsker vs. John Hancock Mutual Life Insurance Company, 254 N. Y. 333; 173 N. E. 4,

and

Travelers Insurance Company vs. Pomerantz, 246 N. Y. 63, 158 N. E. 21,

these decisions construing and applying said statute and holding that the policy must contain the entire contract, and that when an insured receives a policy it is his duty to read it or have it read, and if an application incorporated therein does not contain correct answers to the questions asked by the medical examiner, it is his duty to have it corrected, and in such circumstances a recovery will no longer be permitted because the medical examiner incorrectly recorded the applicant's answers, or because the insured was unable to read or neglected to read the policy. (R. 21, 22).

THE EVIDENCE

The original policy of insurance sued upon to which was attached a copy of the written application signed by Harmon H. Yates, was introduced in evidence, (R. 51), the application showing that it was signed at Jamaica, New York, on May 2, 1932, (R. 20). Respondent and her husband had moved to Jamaica, New York, in March, 1932 (R. 51), where they were still residing when the first premium was paid, and the policy delivered on May 12, 1932. (R. 42, 43). Proof of death executed by Dr. J. G. Schmidt at the request of respondent (R. 44) shows that the insured died June 23, 1932, at the New York Hospital in New York City, New York, the disease causing death being carcinoma or sarcoma of the intes-

tine, and that the deceased first commenced to show symptoms of that disease in March, 1932. (R. 52 B). Proof of death executed by Dr. C. L. Davidson at the instance of respondent, (R. 44), discloses that he attended the insured on April 7, 1932, for a disease diagnosed as secondary anemia. (R. 52 C). Dr. C. L. Davidson testifying by deposition taken at the instance of petitioner at New York City, New York, and claiming a privilege "as to anything as far as the insured's sickness was concerned," stated that he first met the insured as a patient in the month of April, 1932, and that after the first meeting he thereafter during the same month treated him as a patient four times. (R. 48).

Section 58 of the New York Insurance Laws (Laws of 1906, c. 326) set out in full in the statement of the pleadings was admitted in evidence at the instance of petitioner (R. 52, 53). The material portions of the decisions of the Court of Appeals of New York in Minsker vs. John Hancock Mutual Life Insurance Company and Travelers Insurance Company vs. Pomerantz, supra, were also admitted in evidence at the instance of petitioner. (R. 53, 55). The entire amount of premium paid was paid into Court by petitioner. (R. 52).

ERRORS OCCURRING IN TRIAL COURT

The respondent testified in rebuttal that the application for the insurance was made in her home, that petitioner's agent asked the questions and put the answers down in writing, that she heard the agent ask her husband if he had had medical advice from any physician in the last five years, and her husband told the agent—"Nothing more than for

indigestion" (R. 45). This testimony was objected to by petitioner specifically upon the ground that the same was incompetent and inadmissible under the New York law. (R. 28 to 33).

The Court charged the jury that the foregoing testimony of respondent could be considered by the jury for the purpose of showing notice to the insurer, and for the purpose of showing whether or not the insured made false statements that were material. (R. 35, bottom of page), (R. 36). Error was assigned upon this charge upon the ground that the policy involved was a New York contract and under the law of New York alleged statements not included in the written application are not notice to the insurer and are inadmissible in evidence for any purpose. (R. 36).

The Court charged the jury that where limitations upon the authority of the agent who solicited the insurance are contained only in the policy itself, they are to be deemed as referring to matters occurring subsequently to the issuance of the policy, and do not apply to facts or conditions which were existing at the inception of the contract, and that in such case the knowledge of the agent is the knowledge of the insurer and if a policy is issued with knowledge by the agent of a fact or condition which by the terms of the contract would render it void, the insurer will be held to have waived the existence of such fact or condition and the policy will not be voided thereby. (R. 36, 37). Error was assigned upon this charge upon the ground that the charge given was the Georgia law of waiver and estoppel, properly applied only to a contract made and executed in the State of Georgia, and cannot properly be applied to the contract

sued upon in the instant case, which was made and executed in the State of New York, and which is controlled by the provisions of Section 58 of the New York Insurance law as construed by the highest court of that state in Minsker vs. John Hancock Mutual Life Insurance Company, supra. Petitioner incorporated in said assignment of error the applicable statute and decisions of the New York Court of Appeals, and averred that under the New York law any knowledge obtained by the agent at the time of the taking of the application but not contained in the application would not be the knowledge of the insurer, and that under the New York law knowledge of the agent of facts or conditions which would render the policy void but not incorporated in the written application attached to and made a part of the policy, would not constitute a waiver. (R. 37 to 40).

The foregoing assignments of error appear in the amended motion for a new trial, (R. 28), made and filed with the trial court after verdict and judgment were rendered in respondent's favor. This motion having been overruled (R. 56), appeal was taken by bill of exceptions to the Court of Appeals of Georgia assigning error upon the overruling of the motion for new trial as amended (R. 1 to 4) in accordance with the Georgia practice. Georgia Code, 1933, paragraph 24-4506.

FINDINGS OF FACT AND RULINGS BY THE COURT OF APPEALS OF GEORGIA

With reference to the law of New York the Court found as a fact (R. 57) (50 Ga. Apps. 713; 179 S. E. 239):

> "The law of New York is that when a life insurance policy is delivered to the insured, he must read it (or have the same read to him), and the application forming a part thereof, and if the application does not contain correct answers to the questions asked by the agent of the insurer, the insured is under a duty to so inform the insurer, and have the same corrected, and when he fails to do this a recovery will not be permitted, in an action on the policy by the beneficiary against the insurer, even though the insurer's agent was informed of the facts and incorrectly recorded the answers of the applicant. Minsker vs. John Hancock Mutual Life Insurance Company, 254 N. Y. 333, 173 N. E. 4; Travelers Insurance Company vs. Pomerantz, 246 N. Y. 63, 158 N. E. 21."

With reference to the contention made by petitioner that material false representations had been made the Court found the following facts. (R. 58).

> "In this case it is undisputed that the insured visited a physician four times during April, 1932, prior to his death in June of that year, when he was suffering from indigestion, and that the application shows that the question as to whether he had received medical advice during the past five years was answered in the negative."

With reference to the contention of petitioner that under the New York law on account of material false representations the policy was void, the Court further found as a fact: (R. 58)

> "Under the New York law, as pronounced in the above decisions, a recovery could not be had by the beneficiary on this policy."

The Court then held (R. 58) that under the law of Georgia a different rule prevailed, the Georgia

decisions holding that while an insurance policy will be avoided where the applicant therefor has made false answers as to matters material to the risk in the application for the insurance, such as to previous illness, soundness of health at that time, etc., yet where the agent of the insurance company incorrectly records the answers of the applicant to questions propounded in the application as to matters material to the risk, after being informed by the applicant as to the facts, the agent's actual knowledge thereof will be imputed to the insurer and it will be held to be estopped from asserting the invalidity of the policy because of such incorrect statements as to material matters.

The Court held (R. 61) that in the case under review the jury would be authorized to find that the agent had actual knowledge of the facts prior to the issuance of the policy, and that the insurer would now be estopped from asserting that the policy was void because of such misrepresentations.

The Court found as a fact that the policy involved was applied for and issued in the State of New York, the insured and his beneficiary both living there at the time. (R. 63).

The Court held that whether or not there was any error in any of these exceptions based upon the insurer's contention that the law of New York rather than the law of Georgia was applicable, depended upon whether the lex fori or the lex loci contractus controlled. The Court then decided that no error of law appeared in any of these special assignments of error, and the judgment of the trial court was accordingly affirmed. (R. 63).

ASSIGNMENTS OF ERROR IN THE PETITION FOR CERTIORARI TO SUPREME COURT OF GEORGIA

Petitioner made application to the Supreme Court of Georgia for the writ of certiorari to review the decision and judgment of the Court of Appeals. (R. 64).

Petitioner again averred that the policy involved was a New York contract, (R. 65), and again contended that the contract was governed by Section 58 of the Insurance Laws of New York as construed by the Court of Appeals of New York in Minsker vs. John Hancock Mutual Life Insurance Company (supra) and Travelers Insurance Company vs. Pomerantz (supra). (R. 66).

Petitioner contended that the Court of Appeals of Georgia erred:

1. In holding and deciding as applicable to this case that where the agent of the insurer incorrectly records the answers of the applicant to questions propounded in the application as to matters material to the risk, after being informed by the applicant as to the facts, the agent's actual knowledge thereof will be imputed to the insurer, and the insurer will be estopped from asserting the invalidity of the policy because of such incorrect statements as to material matters. Assignments 7 (a) (R. 68); 7 (d) (R. 69); 7 (e) (R. 70); 7 (f) (R. 70).

2. In holding and deciding that there was no merit in any of the special assignments of error made by petitioner which were directed to the illegal admission in evidence by the trial court, over objection, of testimony showing waiver and estoppel and in erron-

eously holding and deciding that whether or not such evidence was properly admitted was to be governed by the law of the forum. Assignment 7 (g) (R. 71).

3. Petitioner asserted that the rulings of the Court of Appeals complained of violated its rights under the full faith and credit clause of the Constitution of the United States. Assignment 7 (h) (R. 71). Petitioner further asserted that the refusal of the Court of Appeals to be governed by the New York statute and its construction violated its rights under the full faith and credit clause of the Federal Constitution. [Assignment 8 (d) (R. 72)].

The writ of certiorari was granted by the Supreme Court of Georgia. (R. 74).

FINDINGS OF FACT AND RULINGS BY THE SUPREME COURT OF GEORGIA.

(182 Ga. 213; 185 S. E. 268)

With reference to the law of New York the Supreme Court of Georgia found that in 1906 the legislature of New York passed the New York statute upon which the decision of the Court of Appeals of New York in Minsker vs. John Hancock Mutual Life Insurance Company was based. (Laws of 1906 c. 326) (R. 78). With reference to the Minsker case the Supreme Court of Georgia found that it was held by that decision that false answers in a written application attached to a life insurance policy with respect to medical advice and hospital treatment as a matter of law defeated recovery though the insured gave truthful oral answers. And further that the plaintiff is bound by the answers as written since the appli-

cation was physically annexed to the policy of insurance received from the insurer. (R. 78).

The Court then proceeds to hold (R. 79) that by the law of Georgia the jury are to determine the materiality of such statements as may be made by the applicant for life insurance. The Court in stating that the only question which arises is whether the laws of New York shall be given extra territorial effect so as to include the geographical limits of Georgia as well as New York, refuses to concede that the New York law forbidding the showing of a parol waiver should be given any effect whatsoever in the trial of the case in the Georgia courts according to the established Georgia procedure, the Court holding as follows: (R. 79)

> "We are of the opinion, as remarked by our predecessors, that we are not required to permit any foreign jurisdiction to overlap the domain which Georgia calls her own. To do this would destroy our right of independent existence."

The Court makes reference to the general rule that the remedy upon contracts must be prosecuted according to the laws of the country in which the action is brought announced in its previous decision of Joyce vs. Scales, 18 Georgia 725, and in response to petitioner's contention that its rights under the full faith and credit clause of the Federal Constitution had been violated the Court gives this rule as its answer (R. 81-82), the Court having previously in its opinion classified petitioner's rights claimed under the New York statute and its construction, as affecting merely the remedial features of the action. (R. 75).

Contrary to Section 58 of the New York Insurance Law and its construction by the Court of Appeals of New York in the Minsker case, the Supreme Court of Georgia finds that its own decisions determine the contentions urged by petitioner that its rights to defend cannot be waived by knowledge imputed to it through its agent. The Court approvingly cites as applicable to this case two of its former decisions—Johnson vs. Aetna Insurance Company, 123 Georgia 404; Mechanics Insurance Company vs. Mutual Building Association, 98 Georgia 262. (R. 77). Both of these decisions hold that the knowledge of an agent as to a material fact bearing upon the validity of a contract of insurance made on behalf of his principal is imputable to the principal, and that limitations in an insurance policy upon the authority of the agent of the Company to waive the conditions of the contract of insurance are to be treated as referring to waivers made subsequently to the issuance of the policy.

The Supreme Court of Georgia in its majority opinion affirmed the decision of the Court of Appeals of Georgia in its entirety. (R. 82).

ARGUMENT AND CITATION OF AUTHORITIES

It is apparent that the Supreme Court of Georgia seeks to escape its obligation existing under the Constitution to recognize and apply the New York law which it has found to exist, by arbitrarily classifying the subject matter of that law as affecting merely the remedial processes applicable to the case. We respectfully submit that petitioner's rights un-

der the Federal Constitution cannot thus be brushed aside. This general principle we submit has long been recognized by this Court. In

Bronson vs. Kinzie, 1 Howard, 311, 316,

it is held

> "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution."

The Supreme Court of Texas in

Home Insurance Company vs. Dick, 15 S. W., (2d), 1028,

made a similar ruling in principle to that of the Supreme Court of Georgia, in this case, by holding that a provision contained in a contract of insurance executed in Mexico limiting suit thereon to one year from date of loss, was not enforcible in the Courts of Texas, and was not protected by the Federal Constitution for the reason, as held by the Texas Court, that parties have no Constitutional rights in matters which are not a substantial part of the contract, but which refer to the remedy only. This Court in reversing the decision of the Supreme Court of Texas,

Home Insurance Company vs. Dick, 281 U. S. 397, 406,

held

> "Nor are we concerned with the question whether the provision is properly described as relating to remedy or to substance. However

characterized, it is an express term of the contract of the parties by which the right of the insured and the correlative obligation of the insurer are defined. If effect is given to the clause, Dick cannot recover from the Mexican corporation and the garnishees cannot be compelled to pay. If, on the other hand, the statute is applied to the contract, it admittedly abrogates a contractual right and imposes liability, although the parties have agreed that there should be none."

The Supreme Court of Georgia, we submit, erroneously reaches the conclusion that to apply the New York statute would be giving it extra territorial effect, which the Court held it was not required to do. And in answer to these views, as expressed by the Supreme Court of Georgia, we again refer to the decision of this Court in

Home Insurance Company vs. Dick, supra, page 410,

in which decision this Court expressed the following views:

"We need not consider how far the State may go in imposing restrictions on the conduct of its own residents, and of foreign corporations which have received permission to do business within its borders; or how far it may go in refusing to lend the aid of its Courts to the enforcement of rights acquired outside its borders. It may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them."

The same principle was again announced by this Court in

Bradford Electric Company vs. Clapper, 286 U. S. 145, 160,

in which case this Court held as follows:

> "A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another State, as under the circumstances here presented, subjects the defendant to irremediable liability. This may not be done."

The New York statute involved as well as its construction by the Court of Appeals of New York was in effect prior to the making of the contract. The statute became a part of the contract, as was held by this Court in

> *Farmers Bank vs. Federal Reserve Bank*, 262 U. S. 649, 660,

as follows:

> "Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge."

Likewise the construction placed upon the New York statute by the Court of Appeals of New York became a part of the statute as much as though it were found in appropriate words in its text.

> *Georgia Railway & Electric Company vs. Decatur*, 295 U. S. 165, 170.

We submit that the refusal of the Georgia courts to recognize and apply the New York statute and its construction forbidding the showing of parol

waiver and estoppel cannot be justified by its holding to the effect that the statute relates merely to the remedy. We submit that waiver and estoppel are not mere matters of procedure. Under the New York statute and its construction petitioner had a vested right to its asserted defense free from any such parol waiver or estoppel. This Court we believe has already announced that this right cannot arbitrarily be taken away. Thus in

Pritchard vs. Norton, 106 U. S. 124, 132,

this Court say:

> "Hence it is that a vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference. Whether it springs from contract or from the principles of the common law, it is not competent for the legislature to take it away. A vested right to an existing defense is equally protected, saving only those which are based on informalities not affecting substantial rights, which do not touch the substance of the contract and are not based on equity and justice."

Petitioner here asserts that its right to its defense unobstructed by waiver is a vested right existing by virtue of Section 58 of the New York Insurance Laws (Laws of 1906 c. 326), as construed and interpreted by the Court of Appeals of New York in the Minsker case and falls within the full protection of the full faith and credit clause of the United States Constitution. That protection, we submit, cannot be denied by the Georgia Courts.

Petitioner's claim for recognition of its rights and defenses under the New York statute were asserted in the trial Court and all through the subsequent

proceedings in the Appellate Courts of Georgia. As appears from the statement of the pleadings and the evidence that statute and the decisions of the Court of Appeals of New York construing it were set up in the pleadings and introduced in evidence. Petitioner's right to the protection claimed under the Constitution was denied by the Supreme Court of Georgia. The rights of petitioner can now be protected only by this Court. In

Supreme Council of the Royal Arcanum vs. Green, 237 U. S. 531,

this Court held, quoting from the syllabus

> "Where the trial Court refuses to hold that the rights of the parties were to be determined by the law of another State, in which a decree had been rendered establishing them, and to apply such law, it refuses to give due effect to such decree, and a question arises under the full faith and credit clause of the Federal Constitution and this Court has jurisdiction under Paragraph 237, Judicial Code."

In

Aetna Life Insurance Company vs. Dunken, 266 U. S. 389, 393,

this Court held

> "Other matters aside, the contention that the contract is controlled by the law of Tennessee or Connecticut—in which event the Texas Statute in respect of penalty and attorneys' fee, as construed and applied, is unconstitutional—clearly presents a substantial question under the full faith and credit clause of the Constitution."

Recognition of petitioner's rights under the full faith and credit clause of the United States Constitu-

tion required the Courts of Georgia to give the statute the same effect as it was shown to receive in the State of New York. We quote from the opinion of this Court in

Chicago & Alton Railroad vs. Wiggins Ferry Company, 119 U. S. 615, 622,

as follows:

> "Without doubt the Constitutional requirement, Article IV, Paragraph 1, that 'full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State' implies that the public acts of every State shall be given the same effect by the Courts of another State that they have by law and usage at home."

To the same effect is the decision of this Court in

Hancock National Bank vs. Farnum, 176 U. S. 640.

Respectfully submitted,

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